



**CIVIL COURT
(FAMILY SECTION)**

MR. JUSTICE HON ANTHONY G VELLA

Sitting of Thursday 17th November 2022

Application number: 220/2020 AGV, in the names of:

NP

v.

CC

The Court ;

Having seen the Sworn Application of N P

Respectfully submits and on oath declares:-

1. That the parties were in a relationship, from which the minor children MC was born on the twenty-second of May two thousand and five (22.05.2005) and MMC was born on the twelfth of September two thousand and thirteen (12.09.2013) (see birth certificates hereby attached and marked as Doc A);

2. That the defendant is an aggressive and a violent person towards the applicant. That in fact, by means of a judgment dated third of September, two thousand and twenty (03.09.2020), the defendant was found guilty of injuring the applicant and causing her to fear violence, which judgment was confirmed by the Court of Appeal by means of a judgment dated fifteenth of September, two thousand and twenty (15.09.2020);

3. That the parties have been authorised to proceed at this instance by virtue of a court decree of this Honourable court dated 2nd of October, 2020 (see court decree hereby attached and marked as Dok B)

4. That the facts here declared are known personally by the plaintiff;

For these reasons the plaintiff contends, saving any necessary and opportune decisions, why this Honourable Court should not:

1. Decides that the exclusive care and custody of the minor children MC and MMC be awarded to the plaintiff and authorises her to take any decisions relating to the minor children, including those relating to the health, issuing of passports, travel, and education of the minor children without the defendant's consent;
2. Orders that the minor children reside with the plaintiff;

3. Determines and liquidates an adequate amount of maintenance which should be payable by the defendant to the minor children MC and MMC reach the age of eighteen (18) years if the minor children stop pursuing their studies and start working on a full time basis or payable up to the age of twenty three (23) years if the minor children decide to pursue their studies on a *full-time* basis; as well as ordering that the alimony be deducted directly from the salary or income of defendant or work or any other benefits that he would be receiving and deposited directly in a bank account that is to be indicated by the plaintiff and further provides how the said maintenance is to be reviewed and increased yearly so that it reflects the increase in cost of living, as well as ordering that the plaintiff receives any benefits relating to the minor children, including but not limited to the children's allowance in its entirety;
4. Orders that the defendant pays arrears of maintenance towards his minor children MC and MMC as well as ordering him to pay arrears of health, education and any extra-curricular expenses;
5. Orders the defendant to pay half of the health and education expenses of the minor children, including but not limited to uniforms, transport, donations, stationary, private lessons and any other expenses related to the education, including expenses related to extra-curricular activities. In the absence, orders that these expenses are reflected in the sum of maintenance;
6. Authorises the plaintiff to register the eventual judgment of this Honourable Court in the Public Registry of Malta.

With costs and interests against the defendant, who is demanded for a reference on oath.

Having seen the Sworn reply of C C :

Respectfully sheweth and on oath personally confirms that he knows of the following;

Facts

1. Whereas in relation to the facts as stated in the first paragraph, these are not contested, but further defendant declares that before the relationship of the parties went sour, they had been living together for about twelve years.

2. Whereas the facts as stated in the second paragraph are being contested in that:
 - (a) First, it should be noted that it is not true that defendant is aggressive or violent.

 - (b) Secondly, with regards to the allegation that defendant used force on plaintiff, reference is made to the judgement delivered by Court of Criminal on the 15th of September 2020 whereby that Honorable Court Appeal declared that:

Illi l-kwerelanti tghid li l-akkuzat kien attakha u kkagunalha feriti fuq il-persuna taghha u ghalhekk semmai l-proskeuzzjoni messha akkuzat lill-appellant bir-reat kif kontemplat fl-artikolu 221 tal-kap 9 tal-ligijiet ta' Malta u cioe' li kkaguna feriti ta' natura hfief fuq il-persuna tal-parte civile f'kaz li jirrizultaw li kien hemm xi feriti u mhux bid-disposizzjoni kontemplata fl-artikolu 339 (1) (d) u ghalhekk ta' din l-akkuza l-Qorti mhux ser issibu hati.

3. Whereas it is further plead, that during their entire relationship the defendant always contributed and provided for all that was necessary towards both the plaintiff and their children.

Requests

4. Whereas with regards to the first request as stated by plaintiff, defendant objects that the care and custody of the children be given exclusively to the plaintiff since as the father of the children, the defendant has every right and interest to participate in all decisions that in terms of law, the plaintiff is obliged to consult and take with his consent;
5. Whereas with regards to the second request, defendant has no objection that the minors continue to reside with plaintiff as they are already doing so;
6. Whereas with regards to the third and fifth request the defendant notes that by means of a decree given by this Honourable Court, as differently presided on the 18th of January 2019, the Court fixed the amount of maintenance *pendente lite* for the two children in the sum of two hundred fifty euro (€250)

which sum had to include the health and education, after it heard the parties and evidence was brought forward. The defendant consequently objects to any variation from this sum;

7. Whereas without prejudice to the above, this Court should determine the extent of the contribution of the two parties and not just the defendant, and this after the Court considers and determines who is going to be taking care of the minors and all the needs of the same as well as the income of the contenders.
8. Whereas with regards to the fourth claim, the defendant states that throughout the relationship between them, as already stated above, he always contributed and did his best for his family and the moment the plaintiff instituted mediation no. 1548/2018, he always paid everything as obliged to pay in terms of the decree above-mentioned, therefore no arrears are due.
9. Whereas defendant is availing himself of the right to proceed at this stage after the authorisation given from the competent Court in the names as provided (Doc B attached with the sworn application) and consequently in view of the ongoing proceedings, instituted by the plaintiff he is availing himself from putting forward a reconvention against counter-defendant
10. Subject to further pleas.

With costs against the plaintiff.

Having seen the Sworn Application of CC;

Respectfully sheweth and on oath personally confirms and knows of the following:

1. That the counterclaimant is availing himself of Article 396 of Cap 12 of the Laws of Malta to present the current application with respect to the counter-defendant.

Facts

2. Whereas counter plaintiff was in a relationship with the counter defendant for the past twelve years from which he had two children with the names of MC and MMC ;
3. Whereas due to differences and lack of agreement between the parties he had to leave the matrimonial home and reside elsewhere;
4. Whereas consequently the counter defendant presented a letter of mediation numbered 1548/18 and pendente lite this Honorable Court as differently presided after hearing the parties ordered the following:

“The Court having heard Counsel to parties holds that pendente lite CC shall pay NP the sum of €250 per month as maintenance for both children which shall be paid by standing order on the second day of every month. This shall include at this stage expenses related to health and education

As regards the care and custody of the minor children since there is in place a protection order such as the parties cannot speak to each other the best

interest of their children will not be served had the Court to the grant joint custody. Therefore pendente lite the custody of the minors children M C and MMC shall be with their mother NP. The Court makes it clear that paternal authority of the minor children is still joint, however with regards to health and education ordinary decisions shall be taken by the mother such that all relevant information regarding the children shall be communicated via the lawyers of the parties.”

Therefore, in view of the above, the counter plaintiff respectfully asks this Honorable Court, save those any order that it deems it proper so to act, to;

1. Entrust the minors M C and MMC, in the joint custody of the parties in the current proceedings with all the opportune provisions in the best interest of the minors;
2. Establish the amount of maintenance due to the children of the counter-claimant in the sum of two hundred fifty Euro (€250) for the two children including the expenses related to the health and education and this as ordered from this Honorable Court *pendente lite* as differently presided on the 18th of January 2013 in the proceedings of NP vs CC ; Mediation Application No. 1548/2018/3;
3. Determine and establish the times and modalities for the right of access of the counter plaintiff to the children MC and MMC ;

With costs and interests against the counter-defendant who from now is being summoned with reference to her oath.

The Court;

1. Having seen plaintiff's sworn reply to defendant's counterclaim, whereby it is true that the parties, were in a relationship from which they had two minor children . That this relationship broke down as a result of aggressive character of the reconvened defendant and accordingly by the respondent filed mediation proceedings ;
2. That the first demand is being opposed and this given the fact that the reconvened defendant is an aggressive person, and is spiteful. That in fact he had been found guilty by the Criminal Court and there is an order prohibiting the defendant from the communicating with the respondent That in addition, it is the respondent that takes care of all needs of the minor children whilst the reconvened defendant has also stopped exercising access towards the minor children and is refusing that they be sent to therapy That therefore, the exclusive care and custody of the minor children should be assigned to the respondent who should also be authorized to take any decision related to the minor children .
3. That the respondent opposed the second demand and this in light of the needs of the minor children and the expenses incurred for the same ;
4. That with regards to the third demand, this is not opposed, as long as the modality of access is regulated in light of their interest of the minor children MMC . That with regards, to the minor child, MC, access should be exercised freely with consent of the same child, and this in light of the minor child's age, given that she will be soon 16 years of age.
5. That the respondent opposes to all expenses of the case.

Save other pleas.

With costs against the reconvened defendant who is demanded for a reference on oath.

Having seen all the evidence brought forward by the parties.

Having seen the documents exhibited.

Having seen all the acts of the case, including the mediation file.

CONSIDERS:

The parties had a relationship between them, from which they had two children, M C born on the 22 May 2005, and MMC , born on the 12 September 2013. The relationship ended, and plaintiff is requesting the Court to award her full care and custody of both children, and order defendant to pay a suitable monthly maintenance towards their upkeep. Defendant, on the other hand, is requesting the Court in his counterclaim to order that the care and custody of the children be joint between the parties, and to limit the maintenance payable by him to €250 per month for both children, which sum is also to include half the expenses normally incurred in the children's educational and health needs. Defendant is also requesting access with both children.

Plaintiff submitted an affidavit as her testimony, in which she explained in some detail the relationship that she had with defendant, referring to a number of violent incidents she had while they were still living together. She mentioned judicial proceedings instituted against defendant, and even exhibited judgments of the Magistrates Court and of the Court of Appeal, condemning defendant and finding

him guilty of the criminal charges brought against him. Apart from these incidents, which plaintiff also confirmed in cross-examination, she also explained that she has been taking care of the children on her own, without defendant's help, for a number of years. She explained that she has various expenses to raise the children and exhibited copies of bills with her affidavit. She is insisting on exclusive care and custody, given the defendant's violent nature and past experiences with him.

In fact, defendant was also referred to therapy during mediation proceedings in order to be given help for his behaviour, but despite there being a Court decree to this effect, he refused to attend, stating that he does not have any behavioural problems. During mediation he was granted access to the minor children under supervision. It is reported that his behaviour was not helping the children even during such supervised access, as he was ignoring Covid safety protocols despite being constantly reminded by the social workers, so much so that he stopped attending the access visits and even refused virtual access with the children.

In his affidavit, defendant denies he was ever violent with plaintiff. He argues that their relationship ended when she requested that a Ukrainian friend of hers comes down to visit them in Malta, where he lived with them for some time. He argues that they left the house together late one night, and he did not like this behaviour from plaintiff. He also states that he always provided for the family, for plaintiff and their two children, and worked hard to maintain everyone.

In cross-examination, defendant testified that he earned around five thousand Euro from his 'pastizzi' shop in Marsascula, in the year 2021, whereas his profit and loss account as exhibited by him showed a profit of just over seven thousand Euro for the same year. In his replies as to how much income he was earning from

this business, defendant was quite evasive, and failed to give any details in this regard. The Court finds it highly unlikely that a 'pastizzi' shop in Malta only generates seven thousand Euro profit in a year.

From all the evidence submitted by both parties, it is evident for the Court that defendant is not a responsible father for his two children. Apart from the turbulent relationship that the parties had, the various episodes of violence, the threats and insults hurled at plaintiff by defendant, what really tips the balance for the Court is the lack of any attempt to ask for the children's welfare and well-being from their own father. Defendant seems determined to not give plaintiff any assistance whatsoever. He appears to lose his temper easily, as was evidenced during supervised access and in his flat refusal to attend anger management sessions as ordered by the Court. He appears to know it all, and to live life according to his rules and no one else's. He has clearly abdicated from his responsibilities as a father and is resolute in providing no help to the mother of his children. The Court finds it ironic that he is requesting to have access with his children in his counterclaim, but then fails to even make one single request pendente lite, when he himself stopped attending supervised access, despite the social workers doing their best to assist him. The Court has little time for people who are indifferent to their own children.

The Court examined in some detail all the acts of the proceedings of the mediation process between the parties. In those proceedings, the Court had ordered that maintenance for both minor children was to be in the sum of €250 per month, which sum included half the ordinary expenses payable for the children's health and educational needs. The Court finds this amount to be far too low and will be

liquidating an amount equivalent to €225 per child, thus a total of €450 per month, which sum includes half health and education expenses.

In those same proceedings, in a decree dated 17 July 2019, Veronica Ellul was appointed as a therapist for the minor child M, who of the two children is the one who is most reluctant to visit her father. This appointment does not seem to have been followed up in the mediation proceedings, as the Court did not find any report filed by the therapist. In that same decree, the supervised access between the father and the child M was suspended, whereas access with the other child M was to continue once a week. This followed a previous decree dated 18 January 2019, setting supervised access for both children. In that same decree, the mother was granted care and custody of both children.

The Court is of the opinion that plaintiff's requests are to be upheld. She has shown that it is in the best interests of both children that she be given sole care and custody of the minors, and that defendant be ordered to pay maintenance for their upbringing. As to defendant's counterclaim, the Court will be granting access with the younger child M, as it seems from the Directorate's various reports, that she was the one who had no qualms with her father. This access will still be under supervision, for one hour once a week.

DECIDE:

For these reasons, therefore, the Court;

Upholds all plaintiff's first, second and third demands, and orders maintenance to be paid in the amount of €450 per month for both children, which includes half the ordinary expenses in the children's health and educational needs, and shall remain so payable as requested in plaintiff's third demand.

Denies the fourth demand, as no evidence was produced to this effect.

Abstains from taking further cognisance of the fifth demand, as this was included with the demand for maintenance as aforesaid.

Upholds the sixth demand.

As for defendant's counterclaim, the Court;

Denies the first and second demands.

Upholds *in parte* the third demand, and grants access to the defendant with the minor child M under supervision of the Directorate for Child Protection, for two hours once a week, which access may increase upon the Directorate's recommendation to this effect.

All costs are to be borne by defendant.

Hon Anthony G Vella

Judge

Cettina Gauci- Dep Reg

